UNITED STATES BANKRUPTCY COURT FOR
THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

In re: JASON AND KRISTIN KOONTZ	)	Case No. 09-30024
	)	Chapter 13
Debtor.	)	
	)	
	)	
KRISTIN KOONTZ	)	Adv. No. 10-03005
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
EVERHOME MORTGAGE COMPANY,	)	
et al.,	)	
	)	
Defendants.	)	
	)	

**LIMITED RESPONSE TO MOTION FOR ENTRY OF JUDGMENT AGAINST
DEFENDANT TRUSTCORP MORTGAGE COMPANY**

Defendant, Mortgage Electronic Registration Systems, Inc. ("MERS"), by its undersigned attorneys, hereby files this Limited Response to the Motion for Entry of Judgment Against Defendant Trustcorp Mortgage Company (the "Motion"). In support hereof, MERS states as follows:

1.   On January 18, 2010, the Plaintiff filed her Complaint in this action.

2.   On March 1, 2010, Defendants Everhome Mortgage Company and EverBank filed a Motion for Summary Judgment on all counts of the Complaint (the "Ever Motion"). On March 23, 2010, the Plaintiff filed her response to the Ever Motion.

3.   Pursuant to this Court's order, on May 5, 2010, MERS filed its Motion for Summary Judgment on all counts against it in the Complaint (the "MERS Motion"). On May 19, 2010, the Plaintiff filed her response to the MERS Motion. Collectively, the Ever Motion,

MERS Motion and the Plaintiffs' responses to both shall be referred to as the "Summary Judgment Pleadings."

4.   On May 19, 2010, the Plaintiff filed the Motion based upon Trustcorp Mortgage Company's ("Trustcorp") failure to respond to the Complaint in these proceedings.

5.   On May 24, 2010, Trustcorp filed a disclaimer disclaiming any interest in the property but making it abundantly clear that its disclaimer has no bearing on the mortgage at issue (the "Mortgage") and the assignments related thereto.

6.   By the proposed order accompanying the Motion, the Plaintiff attempts an end-around the Summary Judgment Pleadings by seeking to have the Mortgage avoided under 11 U.S.C. § 544 in the context of a default proceeding against a third-party. As the Plaintiff knows and as Trustcorp has advised the Court, Trustcorp is not the holder of the Mortgage and its current interest in the Property (or lack thereof) has no affect on the validity of the Mortgage and its assignments. The Plaintiff's attempt to have the Mortgage avoided in the default proceeding against Trustcorp is improper. As set forth in the MERS Motion, the Plaintiff is not able to avoid the Mortgage under the law and facts of this case in any type of proceeding.

7.   Any relief in favor of the Plaintiff as a result of the Motion should be limited to a default order stating that Trustcorp does not have any current lien interest in the Plaintiff's property. The order should not affect the validity of the Mortgage or any of its assignments.

WHEREFORE, MERS respectfully requests that any order entered by the Court in connection with the Motion be limited to ruling on Trustcorp's current interest, if any, in the Plaintiff's property, and not affect in any way the Mortgage or its assignments.

Respectfully submitted,

Date: June 2, 2010

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<u>CERTIFICATE OF SERVICE</u>

I HEREBY CERTIFY, that on this 2nd day of June, 2010, a copy of the foregoing

Limited Response to Motion for Entry of Judgment Against Defendant Trustcorp Mortgage

Company was filed electronically. Notice of this filing will be sent to the following parties

through the Court's ECF System. Parties may access this filing through the Court's system.

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/s/ David J. Jurkiewicz
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